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INTER-AMERICAN DEVELOPMENT BANK
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LABOUR STANDARDS and FREE TRADE AGREEMENTS

The case of Chile

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Introduction

Chile has a wide network of trade agreements and through its negotiations with countries of different continents has experienced a variety of frameworks, almost always including the labor issue. Because of this, it makes a good case study to analyze the relationship between labor standards and free trade agreements.

Chile's first experience of trade related negotiations that included the labor issue was at WTO, concretely the "Singapore Declaration, 1996". In this meeting Chile had an active role in creating an international consensus on the labor standards that should constitute the social basis of economic globalization. This declaration enounced basic human rights and labors principles, such as freedom of expression and association, prohibition of forced labor and rejection of all forms of discrimination, that should be considered as part of the globalization process. At the same time, it was agreed, that labor standards should not be used as trade barriers nor that the lack of compliance with them could give raise to trade related sanctions.

This discussion, as agreed in Singapore, was continued in 1998 at the ILO's "Copenhagen Conference" where all participating countries agreed on the "Declaration on Fundamental Principles and Rights at Work and its Follow-up". All countries, represented by governments, labor unions and entrepreneurial organizations, committed themselves to respect the following ILO agreements:

- ? Freedom of association (Convention 87) and of labor union organization and of collective bargaining (Convention 98).
- ? Abolition of any form of forced or compulsory labor (Conventions 29 and 105).
- ? Elimination of any form of child labor (Conventions 138 and 182).
- ? Elimination of all forms of discrimination at the working place (Convention 111) and in terms of remuneration (Convention 100).

From this ILO convention onwards the international community has agreed, on several occasions, that it is ILO the institution in charge of establishing labor standards and of the surveillance of its compliance.

During 1998 Chile also signed a free trade agreement (FTA) with Canada which included an annex with labor issues. The content of this annex was very much alike the one included in NAFTA between the USA, Canada and Mexico. The only difference was that this agreement did not contemplate trade sanctions that, although in a very restricted form and only for extreme cases, were considered in NAFTA. The Chile-Canada FTA considers a dispute settlement mechanism that includes ministerial consultations and expert evaluation committees on labor issues. Under certain conditions this mechanism could apply monetary sanctions (up to US\$ 10 million dollars in the case of Canada-Chile and US\$ 20 million in the case of NAFTA). Both countries committed themselves to upgrade their labor legislation to give due account of their common commitments at the ILO. It also considered co-operation between the partners on labor issues, particularly in the area of institutions and mechanisms that ensure compliance.

The NAFTA agreement (between Canada, Mexico and USA) also included co-operation on institutions and compliance related issues, but incorporated an additional area geared towards the improvement of the “quality and productivity of work”. This area that coincides with one of the most important socio-economic problems in Latin America, has not been present in any of the agreements negotiated by countries of this region.

In December 1998, Chile signed the “Mercosur Social and Labor Declaration” where all parties commit themselves to respect labor standards similar as the ones agreed at the ILO. On this same occasion the “The Social and Labor Commission of Mercosur” was created to survey compliance of Mercosur members, which did not include Chile nor Bolivia given their character of associate members.

In the FTAA meeting at Quebec in April 2001, all Heads of State of the Americas agreed on the importance of the labor standards issue. They ratified the consensus reached at ILO in its 1998 Declaration on basic labor rights and principles and committed themselves to promote compliance with these labor standards. A similar agreement had been reached at the 1998 OAS Summit in Viña del Mar and again ratified in its next summit in Ottawa, 2001.

In 2002 Chile signed a free trade and co-operation agreement with the European Union that although it included a democratic and social agenda it did not make a specific reference to labor standards. Both parties committed themselves to institutionalize a social dialogue mechanism that would involve workers, business and other social organizations. The European Union offered co-operation to carry on this commitment, but until now it has not been used, nor formalized the social dialogue institution in Chile.

Finally, in 2003 Chile signed a free trade agreement with the USA that, for the first time, included the labor issue as one chapter (and not an annex) of the agreement. The labor aspects of this agreement will be analyzed in the next section, but again it was based on the ILO 1998 Declaration.

As can be seen the 1998 ILO declaration defined the basic grounds for all references made by Chile to labor standards in its free trade agreements with very different parties, as well as in other multilateral and regional forums. In all cases compliance has remained a

domestic issue and trade sanction have not been considered. In all cases as well, some kind of co-operation agreement on labor issues was considered.

1.- Labor standards in the Chile-USA free trade agreement

As mentioned the Chile-USA free trade agreement (FTA) includes a chapter on labor (annex 2). The fact that the labor issue is an integral part of the agreement is unique in both countries experience (in the case of the USA a similar agreement and simultaneously in time was signed with Singapore and Jordan). This was not the position that Chile originally had (its proposal was to replicate the FTA with Canada where labor was an annex that had its own dispute settlement mechanism). Chile accepted this new framework only when it realized that it was inevitable in order for the American Parliament to grant the Trade Promotion Authority (TPA) to the President of the United States. Parliament had conditioned this authority to several issues that were related to labor and employment.

The TPA mentions that compliance with fundamental labor standards are part of the USA trade objectives – as it also did in the general system of preferences that the USA has applied to Latin American-. Together with the TPA the American Congress voted the Trade Adjustment Assistance law that provides support to the workers that might be negatively affected by the trade agreements. Simultaneously, although not very coherent with the spirit of free trade, the steel industry was protected and additional subsidies to agriculture were granted.

An important contribution towards the acceptance, in both countries, of these labor conditions within the agreement was the joint declaration by the two Presidents of the national labor unions of Chile (Central Unitaria de Trabajadores) and the USA (AFL-CIO). This declaration stated that free trade agreements should be negotiated in an open and transparent fashion and should consider the increasing inequality among and within countries. They also call to respect fundamental workers rights, as well as general human rights and protect the environment. In relation to the Chile-USA FTA they call their respective governments to include, in the main text of the agreement, a commitment to ensure compliance with domestic labor legislation and fundamental labor rights as defined by ILO. They were also explicit that the mechanisms to be created to ensure compliance with labor legislation should not incentive any form of protectionism.

The TPA stipulates, and Chile as well as Singapore agreed, that parties should reaffirm their obligations as members of the International Labor Organization (ILO), particularly the commitments that arise from the “1998 Copenhagen Conference”. This defines a framework that most probably all other countries that negotiate with the United States will have to follow. This situation can already be appreciated in the negotiations that the USA is having with Central America plus Costa Rica, as well as, with Peru; although these countries have not expressed their agreement with this position yet.

In the Chile-USA FTA both parties commit themselves to recognize and legally protect the labor principles and rights defined by this declaration, particularly by its article 18.8. Thus, each party shall strive to ensure that its laws provide for labor standards consistent with this declaration, particularly:

- ? The right of association.
- ? The right to organize and bargain collectively.
- ? Prohibition on the use of any form of forced or compulsory labor.
- ? Minimum age for the employment of children and prohibition and elimination of the worst forms of child labor.
- ? Acceptable conditions of work with respect to minimum wage, hours of work and occupational safety and health.

The FTA also commits both parties to effectively enforce its labor laws, although it recognizes the right of each party to exercise discretion with compliance matters and to make autonomous decisions regarding the allocation of resources to enforce labor standards. The setting of standards and levels in respect of minimum wages was not part of the agreement; each party's obligation is to enforce the level of the general minimum wage established by the party. No party is empowered to enforce labor legislation in the territory of the other party. And, each party is responsible to ensure the enforcement and promote public awareness of its labor laws.

The FTA created a "Labor Affairs Council" to oversee and review progress in the implementation of these labor standards. All decisions of this council have to be taken by mutual agreement and have to be made public. Any party may request consultations regarding the issues considered in the labor chapter. This agreement also includes a clear schedule (and tighter than in other agreement) to resolve the issues before other bodies intervene.

If the Council fails to resolve a certain matter under consultation within 60 days other bodies of the FTA may intervene. First the commission of "Good Offices, Conciliation and Mediation" and if this does not reach an agreement four members of a Labor Roster should try to resolve the dispute. 12 individuals appointed by mutual agreement compose this roster. Neither party may have recourse to dispute settlement on any issue different than the enforcement of its labor laws in a matter affecting trade between the parties. The labor standards issues to be considered as eventually affecting trade refer to only 5 of the 8 labor conventions that are mentioned in the agreement (two on child labor, and the ones related to freedom of association, forced labor and acceptable conditions of work).

The dispute settlement mechanism might impose a monetary contribution to one of the parties up to an amount of US\$ 15 million dollars per year. This contribution must be paid in equal quarterly quotas and invested in improving the institutional capacity of labor institutions in the penalized country. If the contributions were not to be paid, the other party may take actions that include the suspension of foreign duty benefits, only if no third party is affected.

It must be considered that these conditions are similar to the ones established in 1998 in the Canada-Chile FTA and that during the 5 years of this agreement the dispute settlement mechanism has never been used. In the case of NAFTA, that has a similar clause, since 1992 only the Labor Council has been called for, never the dispute settlement body. So it

does not seem probable that issues related to compliance with labor standards will be important in the implementation of the FTA.

Until now none of the labor standards related bodies of the Chile-USA FTA (Labor Affairs Council, Consultative Commission and Labor Roster) are in operation, given that only three of the six months agreed to create them have gone by. Supposedly they should start their operation in April 2004, two months before the agreed time limit.

The Chile-USA FTA also creates a “Labor Co-operation Mechanism” to pursue the labor objectives of the agreement and to further advance their common commitments within the ILO. This co-operation mechanism may undertake co-operative action on any labor matter that it considers appropriate such as the fundamental rights and their effective application, labor relations, working conditions, social protection or issues related to small and medium enterprises. It also includes, among other things, the exchange of information on labor policies and on the application of labor laws. As well as, co-operation to promote the collection and publication of comparable data on labor standards, labor market indicators and enforcement activity. And research on the implication of economic integration between the countries for advancing each parties labor objectives. In identifying the areas for co-operation the parties commit themselves to consider the views of their respective worker and employer representatives, as well as other members of civil society.

This Co-operation agreement has not started its operation, although in 2002 during the negotiations of the FTA, the United States Labor Department and the Ministry of Labor of Chile signed a co-operation agreement for three years financed with US\$1,7 million by the USA. These co-operation aims at improving the institutional capacity to enforce compliance of labor standards and support the activities of the Chilean government geared towards reforming the judicial administration of labor laws. This co-operation agreement should start its operations during this year, 2004.

As part of this co-operation agreement delegations of both countries have visited each other to look at and discuss compliance with labor laws related to minimum wage and overtime, occupational safety and health, unfair labor practices and collective dispute resolution. The conclusions reached by these delegations, as stated in the co-operation agreement, is that “the labor laws of Chile and the USA are considered to be fully consistent with internationally recognized basic labor rights, as defined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work”. Given this conclusion, the co-operation project was focused on institutional growth not legislative change. By institutional growth it was considered the improvement of staff knowledge and skills, as well as institutional procedures to help compliance with the provision of the existing Labor Code.

Table 1
Latin America and the Caribbean:
Adhesion to the ILO Conventions, by countries
(Index, 0-1)

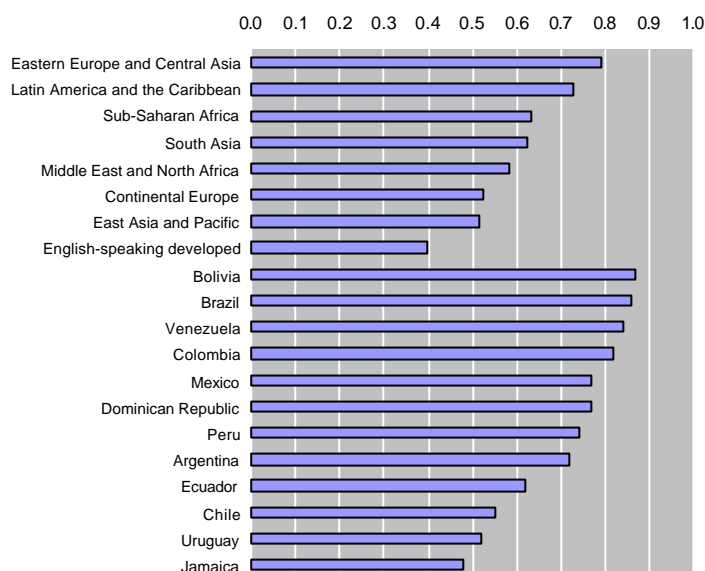
Countries	Index
Argentina	0.88
Barbados	0.84
Bolivia	0.65
Brazil	0.80
Colombia	0.76
Costa Rica	0.85
Chile	0.86
Ecuador	0.86
El Salvador	0.63
Guatemala	0.88
Honduras	0.82
Jamaica	0.63
Mexico	0.69
Nicaragua	0.86
Panama	0.88
Paraguay	0.74
Peru	0.77
Dominican Rep.	0.84
Trinidad and Tol	0.62
Uruguay	0.91
Venezuela	0.76
Average	0.79

Source: ILO, 2002

Chile's situation in terms of ratification of the ILO conventions is not significantly different from the situation in the majority of Latin American countries. In table 1 can be seen that Chile is, in terms of ratification, a bit above the Latin American average. After ILO conventions are ratified, they need to be transformed into domestic legislation in order for enforcement to take place.

Figure 1 provides a comparison of an index of conditions of employment in world regions and Latin American countries. Higher values of the index indicate a greater number of regulations and more protective regulations for workers. The index captures what is written in the laws and regulations of each country on the maximum number of hours of work, overtime work, night shifts, holidays, maternity leave, other types of leave, and vacation days. As can be seen in this figure, Chile has less legal norms that protect workers than the majority of Latin American countries, but it has more norms than English speaking developed countries, East Asian countries and continental Europe. As a matter of fact Latin America is the second region in the world (after Eastern Europe and Central Asia) in terms of the number of legal norms that protect workers. This facts ratifies the idea that meeting fundamental labor standards in Chile, as well as in the Region as a whole, is much more of an issue of compliance rather than a legal one (improving labor legislation).

Figure 1
Conditions of Employment
(Index, 0-1)



Source: Djankov and others (2003)

As can be appreciated the Chile-USA FTA does not add new labor standards commitments or raise the existing ones in any of the parties, in terms of contents nor procedures. Even more, both parties agreed –although not in the text of the FTA- that each other's Labor Legislation is in accordance with the FTA and ILO requirements.

It is also clear that the FTA does not link trade (or related sanctions) to the compliance of existing labor standards. Its efforts are geared towards the creation or strengthening of existing institutions to positively induce the public knowledge and enforcement of existing labor standards in each country. It explicitly recognizes the right of countries to define what they consider the best arrangements to promote and ensure the compliance of labor standards. Both parties also recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws that should be coherent with internationally recognized labor rights.

The FTA does not include any commitment to converge on labor standards, besides the pre-existing fact that both countries had already acquired common commitments within the ILO framework. The FTA explicitly states that the legal implementation of such commitments is a domestic matter. Thus, two different labor standards that mean to interpret a unique principle or right, as defined by the ILO declarations, can coexist and is acceptable, although these differences can be the object of consultations but not of sanctions.

Given that the ILO is already responsible for the monitoring and control of the rights defined in its conventions, this agreement does not change the existing situation in terms of compliance, but it does create mechanisms of co-operation to facilitate compliance and

increase transparency at the domestic level. Neither does it include any role for the ILO as the institution responsible for monitoring compliance.

Although the Chile-USA FTA has not changed the situation on labor standards in neither of the countries and, until now, the labor institutions considered in the agreement have not been created, some changes on this matter can be appreciated in Chile according to the Labor Department, institution responsible for enforcement. Since the FTA was signed this institution has reached important voluntary agreements with entrepreneurial organizations in areas where trade with the USA is very significant (aquiculture and agriculture). These agreements have implied an important reduction in the number of infractions to the labor legislation in these economic sectors. It has also enabled an improvement in the surveillance methods, moving towards a preventive method based on analyzing a sample of firms from the industry, rather than the one based on responding claims for trespassing labor standards.

The Labor Department experience is that the FTA had the effect of legitimising existing labor standards among the business community of the export oriented sectors improving compliance. This will probably have an effect on the economy as a whole because the Labor Department will not accept differences between the sectors covered by the FTA (because they produce tradable goods) and the rest of the workers. In order to deal with this new situation the Labor Department wants to move towards preventive surveillance in all sectors that requires new techniques and capabilities. Creating these capabilities could be an important aspect of the co-operation agreement already signed by the labor Ministries, as well as, the one considered in the FTA.

2. - Labor market vulnerability and compliance with labor standards

One of the most striking differences between the labor markets of developed and less developed countries is the relative importance of what ILO has defined as the “informal sector”. The informal sector is defined in two forms. The first is related to compliance with existing legislation: labor, taxes and social regulations. The second to the quality of work: productivity, stability and wages. Although these are two very different definitions, in practice they mostly refer to the same group of workers and enterprises. The legally unprotected or vulnerable workers usually work in low productivity and unstable jobs. This is a crucial issue because in Latin America only the majority of the workers of the formal sector have access to the conditions established in the Labor Code, such as contracts and social security. The majority of the informal sector workers not only do not have access to the benefits of labor legislation, but the enterprises where they work cannot afford to comply with it, mostly because their very low productivity levels do not enable them to further increase their labor costs.

This issue can clearly be appreciated by comparing the differences in wages and in productivity for different sizes of firms. Table 2 and 3 show that in Chile the productivity gap between small and large enterprises is much larger than their wage gap. The average productivity in large firms is 6 times higher than in small enterprises and 15 times larger than in micro-enterprises. Table 3 shows that average wages in large firms are 34% higher than in microenterprises and 7% higher than in small firms. This tremendous difference

between the wage and the productivity gap implies that small firms are already making a relatively greater effort to pay higher wages and that with their present productivity level it is difficult to increase the cost of labor. It is interesting to note that the average productivity for the same size of firms varies significantly among the different regions. The metropolitan area of Santiago has, by far, the largest productivity levels, particularly in the larger firms. At the same time the poorest region (IX de La Araucanía) is the one with the lowest average productivity. Thus for economic or productivity reasons the probability of complying with labor standards is concentrated both regionally and by firm size.

Table 2
Average productivity of work by firm size.

REGION	Micro	Small	Medium	SMEs.	Large	Total
I Tarapaca	0,222	0,476	1,132	0,644	1,658	0,625
II Antofagasta	0,417	0,613	1,079	0,759	1,631	0,817
III Atacama	0,311	0,481	0,468	0,476	0,761	0,416
IV Coquimbo	0,228	0,426	0,618	0,487	1,199	0,460
V Valparaiso	0,236	0,457	0,673	0,527	2,124	0,705
VI O'Higgins	0,261	0,406	0,451	0,423	0,909	0,381
VII Maule	0,205	0,342	0,669	0,422	1,735	0,395
VIII Biobio	0,227	0,395	0,648	0,473	1,677	0,556
IX Araucania	0,179	0,458	0,766	0,541	1,099	0,387
X Los Lagos	0,186	0,428	0,825	0,523	2,265	0,508
XI Aysen	0,217	0,519	0,744	0,597	0,712	0,401
XII Magallanes	0,310	0,614	0,929	0,723	0,714	0,475
Metropolitan	0,257	0,610	1,102	0,796	5,575	1,587
TOTAL	0,240	0,510	0,903	0,643	3,530	1,000
Average	0,252	0,480	0,777	0,569	1,697	0,595
Standar deviation	0,064	0,086	0,226	0,126	1,277	0,328

Source: A García (2002).

It can also be seen that workers in smaller firms have an average income that is significantly below the one received by the rest of the informal sector (composed basically by non professional self employed workers, for whom their income directly reflects their productivity). Thus, the very low productivity levels of the informal sector, and particularly of small firms, is the greatest restriction to improve compliance with labor standards for the most vulnerable workers.

Table 3
Chile: Average income of work, by occupational category

Employed	308,257
Formal sector	345,483
Informal sector	225,514
Wage earners and employers	314,428
Microenterprises (1 to 5 people)	251,109
Small companies (6 to 9 people)	313,600
Medium sized companies (10 to 49 people)	365,710
Large companies (50 or more people)	335,556

Source: CASEN, 2000

Table 4 shows that in Chile the relationship between wages in different size firms are not significantly different that in the rest of Latin America, at least relative to the productivity gaps. It can also be seen that during the 90's the wage gap between small and large firms grew very significantly in most countries in the Region.

Table 4
Latin America (10 countries): Relations of the average income of employees

Country	Relation of the average income of employees and the average income of other sectors			A
	Formal	Informal	Micro-enterprises	
Argentina	1.02	0.96	0.96	-19.44
Bolivia	1.23	0.83	0.80	-29.12
Costa Rica	1.17	0.70	0.73	2.23
Chile	1.09	0.85	0.64	-6.40
Ecuador	1.31	0.72	0.85	3.56
Mexico	1.05	0.96	0.83	-29.09
Panama	1.26	0.53	0.67	5.15
Paraguay	1.05	0.87	1.21	-57.82
Uruguay	1.22	0.60	0.63	-16.82
Venezuela	1.04	0.94	1.04	-11.37
Latin America	1.14	0.79	0.84	

A: Percentage of variation of informal workers' income, with respect to the large companies employees' income.

Source: ILO, 2002

Given that in Chile, as in most Latin American countries, the Labor Department is focused on the inspection and corrective action in the formal sector, a very large proportion of the work force is completely uncovered by its doings. Thus, the first and probably largest issue in terms of compliance of Labor Codes is to know the size and evolution of the informal sector or vulnerable groups given that they usually do not have labor contracts and thus are not covered by existing social obligations in the working place.

This situation is clearly seen in Table 6 that shows that in Chile 68,9% of the workers of large firms and 74% of workers in the public sector have permanent contracts at their working place, while only 43,9% of the workers in small firms are in the same situation. This gap of formal employment in different size firms is even larger in the rest of Latin America. Workers in small firms plus those that are unemployed or self-employed but unqualified, are the most vulnerable workers in terms of compliance with existing labor standards.

Table 5
Latin America (9 countries): Participation in the labor force, by working condition. 1992-2002 (Percentage)

Countries		Employers	Low vulnerability			High vulnerability			Total	
			Large companies wage earners	Public wage earners	Self-employed workers	Small companies wage earner	Unqualified Self-employed workers	Unemployed or non-wage earners	Low vulnerability	High vulnerability
Argentina	1992	5.4	34.7	8.7	2.3	19.2	21.7	8.0	51.2	48.8
	1996	3.6	28.3	13.2	2.5	18.3	15.8	18.4	47.6	52.4
	2001	3.5	27.1	13.8	2.5	17.6	16.2	19.3	46.9	53.1
Bolivia	1997	6.2	15.6	8.5	1.6	7.0	39.0	22.1	31.9	68.1
	1999	3.5	14.6	8.2	1.2	10.9	42.0	19.7	27.5	72.5
	2002	5.0	13.0	8.4	1.5	10.3	38.8	23.1	27.8	72.2
Brazil	1995	4.4	27.3	13.0	0.9	9.1	29.0	16.3	45.6	54.4
	2001	4.2	28.8	11.7	1.1	10.7	26.2	17.3	45.8	54.2
Chile	1996	3.5	44.9	9.9	1.3	16.1	17.6	6.9	59.5	40.5
	2000	3.6	40.6	11.6	1.6	14.5	16.3	11.9	57.3	42.7
Ecuador	1994	6.3	23.0	8.2	1.1	20.0	26.4	15.1	38.5	61.5
	1998	5.9	22.9	7.6	1.1	16.8	28.4	17.3	37.5	62.5
Guatemala	2000	6.5	24.2	6.6	0.8	30.9	20.3	10.7	38.1	61.9
Mexico	1996	4.7	31.5	12.3	0.6	19.2	21.0	10.7	49.1	50.9
	2000	4.8	34.5	12.0	0.9	20.1	20.1	7.8	52.1	47.9
Nicaragua	with public sector									
	1993	0.5	14.6	14.0	0.6	11.6	30.6	28.0	29.7	70.3
	2001	5.0	23.6	7.3	0.4	18.6	26.7	18.4	36.3	63.7
	without public sector									
	1993	0.6	17.5	-	0.7	13.5	35.4	32.4	18.8	81.2
	1998	3.6	30.2	-	0.3	20.6	27.1	18.1	34.1	65.9
Peru	2001	5.0	30.6	-	0.4	18.9	26.7	18.4	36.0	64.0
	1994	2.3	18.4	11.1	3.4	11.3	33.5	19.9	35.2	64.8
	2000	2.3	17.6	10.3	3.0	12.6	32.6	21.7	33.1	66.9

Source: ILO, 2003

Table 5 shows that in Latin America highly vulnerable or unprotected workers are more than half (Chile with 42,7% is the only exemption) and up to 72% (in Bolivia) of the labor force. It can also be seen that during the 90's most countries experienced an increase in the participation of vulnerable workers in the labor force.

The participation of low productivity workers increased, in the case of the simple average for nine Latin American countries (and subtracting those employed in agriculture) from 42.8% in 1990 to 46.5% in 2002 of the employed labor force. During the same period

unemployment grew from 9.5% to 12.2%. Thus for the region as a whole the vulnerable sector represented 58.7% of the labor force in 2002.

Table 6
Latin America (7 countries): Wage employees with a contract
(Percentage)

Countries		Total wage employees				Men				Women			
		Large companies	Public sector	Small companies	Total	Large companies	Public sector	Small companies	Total	Large companies	Public sector	Small companies	Total
Bolivia	2002	37.5	83.3	10.1	40.7	35.8	82.6	8.6	36.2	42.7	84.1	14.6	51.0
	Permanent contract												
Chile	2002	11.9	58.4	2.0	21.0	11.4	56.8	1.3	17.4	13.4	60.4	3.9	29.2
	Permanent contract												
Chile	1996	82.7	93.7	53.2	77.5	82.5	94.0	54.8	79.2	83.2	93.4	51.6	74.7
	2000	83.1	92.7	50.1	77.3	83.1	92.9	51.7	79.5	83.2	92.5	48.9	74.0
Chile	Permanent contract												
	1996	68.3	82.8	44.7	64.9	67.6	84.4	44.2	65.6	69.8	80.8	45.2	63.7
Ecuador	2000	68.9	74.0	43.9	64.2	68.2	73.0	45.1	65.3	70.5	75.1	42.7	62.4
	Permanent contract												
Ecuador	1994	49.5	91.3	9.9	47.8	46.1	91.4	9.2	43.8	57.3	91.1	11.8	55.8
	1998	49.4	94.7	15.3	49.3	47.0	96.3	16.1	46.9	55.1	92.6	13.7	54.2
Guatemala	1994	35.7	81.6	7.9	38.1	32.2	82.3	7.4	34.3	43.7	80.7	9.3	45.9
	1998	35.4	85.4	13.2	39.5	33.4	87.2	14.0	37.3	40.3	83.0	11.5	44.0
México	2000	42.8	84.6	11.9	43.0	40.5	79.2	10.7	37.8	45.9	77.9	13.0	43.3
	Permanent contract												
México	1996	63.3	98.7	12.5	54.8	60.6	98.1	12.7	52.5	70.0	99.5	12.1	59.5
	2000	64.7	92.3	10.4	53.3	62.2	91.9	9.1	49.4	70.7	92.8	13.7	61.6
Nicaragua	1996	52.1	84.9	9.9	45.7	50.3	82.9	9.8	43.6	56.5	87.8	10.2	50.0
	2000	53.8	81.6	8.3	45.1	51.6	80.4	7.1	41.4	58.9	83.1	11.6	52.9
Peru	1998	39.6	-	7.5	26.6	37.6	-	7.6	26.4	44.2	-	7.3	27.2
	Permanent contract												
Peru	1998	23.5	-	4.4	15.8	21.9	-	3.9	15.1	27.3	-	5.1	17.0
	Permanent contract												
Peru	1994	32.2	37.9	6.5	27.0	31.5	37.0	5.9	25.7	33.8	39.2	8.0	29.7
	2000	24.3	52.4	6.6	25.9	25.8	52.3	5.8	26.0	20.4	52.6	7.9	25.7

Source: ILO, 2003

In Chile in the year 2000, 81% of the workers in the vulnerable sector did not have a labor contract and thus were not covered by labor legislation. Those vulnerable workers that are protected are mostly non professional self employed that, as was seen, have an average income level that is higher than the rest of the informal or vulnerable sector.

If the simple average for the 9 countries mentioned in tables 5 and 6 is taken we find that salaried workers represent 58.6% of the labor force in these countries. Of these (in only 7 of the 9 countries analyzed which had the corresponding figures) only 47,4% had indefinite labor contracts which implies that about 28% of the labor force is enabled to the full benefits of the labor legislation. In Chile this figure is of 46.1%, the highest in the sample, which implies that less than half of the members of the work force, are covered by the existing Labor Code.

Thus consistency of the Chilean labor legislation with internationally recognized basic labor rights and compliance with these codes is, as today, a relevant issue for less than half of the working force. Because of the strong relationship between productivity of the working place and the existence of labor contracts changing the situation of vulnerable workers is not an exclusive issue of improving the institutional capacity of the Labor

Department so it enforces better the existing legislation. It is also a matter of increasing productivity in the smaller enterprises, which requires investment in the firm as well as in the human capital of the worker.

Unfortunately this crucial issue for more than half of the labor force in Chile, and 70% of the employed in the rest of the countries that were analyzed, was not considered as part of the co-operation agreement, as it was included in the case of NAFTA.

3. - Labor Standards in Chile

There are no studies that enable a strict quantification of compliance with the different labor standards in Chile. Existing information only permits to analyze the amount of people that are covered or profit from some of the standards or rights covered by the conventions included in the FTA that Chile has signed. The cases of freedom of association, collective bargaining, child labor and conditions of work (including minimum wages, hours of work and occupational health and safety) will be analyzed in the next sections.

Another way of approaching this issue is analyzing the number and type of claims for infractions of labor standards denounced in the Labor Department. In tables 7 and 8 can be seen that, in the year 2003, 80.600 claims were placed and 60.586 infractions were given. If we consider that over 2.000.000 workers have a contract in Chile, the incidence of both claims and infractions is not very significant.

Table 7
Chile: Infractions observed in controls. 2003

Infractions	Number
Employment contract	7,469
D.F.L.No 2	9,473
Termination of employment contract	31
Daily rest	3,649
Dismissal of workers with protection	49
Annual holidays	444
Social security contributions	6,961
Workday	3,617
Collective bargaining	447
Unions	418
Maternity protection	348
Protection of workers	6,478
Attendance registry	11,880
Earnings	9,320
Total Infractions	60,584

Source: Ministry of Labor of Chile

Table 8
Chile: Workers Claims. 2003

Claims	Number
Sexual harassment	61
Social security benefits	14,686
Employment contract	17,949
Social security contributions	8,500
Annual holidays	1,492
Sanitary and safety	3,549
Workday and rest time	11,132
Collective bargaining	1,137
Unions	1,035
Other matters	282
Maternity protection	520
Earnings	20,257
Total Claims	80,600

Source: Ministry of Labor of Chile

The most recurrent issue in claims, 29% of them, is payments for social security. An issue that is not explicitly covered by the labor standards recognized in the Chile-USA FTA. The other relevant issues are wages, working hours and labor contracts that are partially considered in the FTA. These latter ones are also the most relevant issues if infractions given by the Labor Department are considered.

The other issue to be considered is the institutional capability of enforcement of labor standards. Again only very general indicators can be elaborated. In table 9 can be appreciated that the number of public officials in charge of surveillance per 100.000 workers is significantly higher in Chile than in Argentina, Brazil and Peru.

Table 9
Latin America (4 countries): Enforcement capacities of Labor Ministries of the region

Country	Inspectors per 100,000 workers
Argentina (1998)	4.03
Brazil (2002)	3.63
Chile (2003)	10.73
Perú (2002)	2.21

Source: IDB, 2003

This indicator does not provide any basis to compare methods and efficiency in the enforcement procedures, which can be a very relevant issue. According to the statistics of

the Chilean Labor Department, without experiencing significant changes in the number of public officials, its efficiency has improved significantly. Only during last year (2003) the number of enterprises that were object of surveillance increased in 99%, in 23% the number of infractions that were given and in 66% the number of agreements on labor standards reached with enterprises. If all types of surveillance procedures are considered the rate of growth was 12,5%. This implied that the number of workers that were covered by the procedures of the labor department increased in 62% and the amount of time required to respond for an action demanded from the labor department was reduced by 43%.

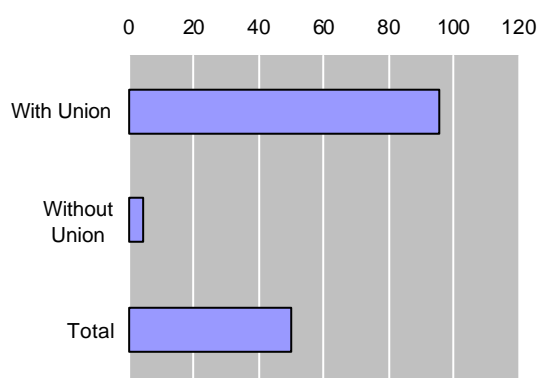
These figures reinforce the notion that the enforcement problem is not only an issue of institutional size, but mostly of methodologies and efficiency. These are precisely the issues that are considered in the co-operation agreement between the Chilean and American Ministry of Labor.

3.1- Freedom of association and collective bargaining.

Although Chile presents an increasing number of claims for not fulfilling the right of freedom of association, they are not significant in number (see Annex, Table 1A). Last year 1.004 claims related to labor unions were placed, and 418 infractions were given by the Labor department related to this issue. A similar figure occurred in the case of collective bargaining (1.137 claims and 447 infractions). In Chile, as can be seen in figure 2, the existence of collective bargaining is strictly related to the existence of a labor union.

Figure 2

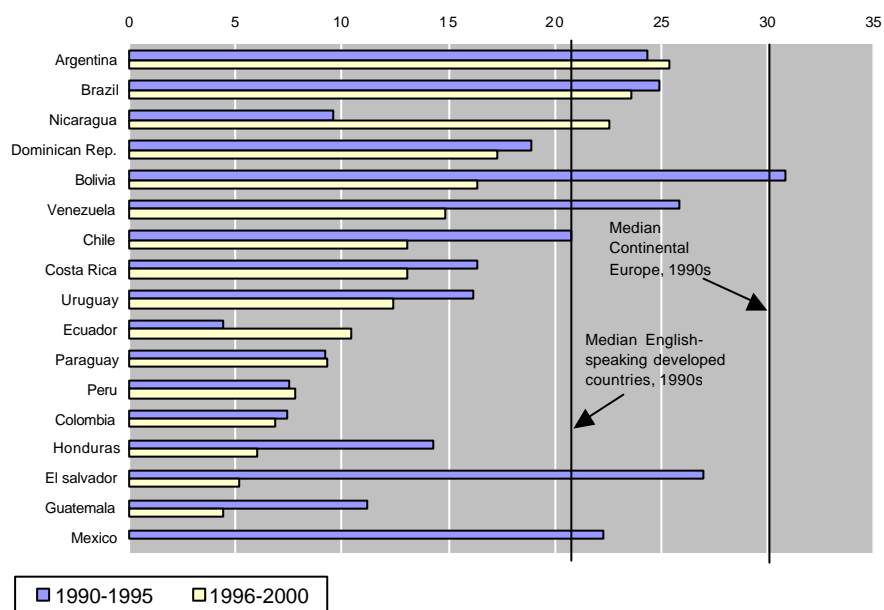
Chile: Percentage of firms with collective bargaining during the last five years



Source: ENCLA, 2002

The percentage of unionized workers has decreased in a very significant manner (Figure 3). In the early 90's 20.8% percent of Chilean labor force belonged to a labor union. This figure was consistent with the situation in the USA and the Latin American average (21.1%). In the second half of the 90's this indicator decreased to 13.1%, well below the Latin American average (19%).

Figure 3
Unionization Rates, 1990-1995 and 1996-2000



Source: ILO, 2002

Table 10 presents information from the labor department that shows a lesser reduction in the participation of unionized workers, but still that the number of workers that belong to labor unions have decreased in absolute terms since 1991-92 when affiliation reached its peak. This has occurred at the same time that the number of unions has permanently increased, which shows that these institutions have decreased very significantly in size (about half of the size they had in the early 90's). It is interesting to note that although unionization has decreased, the trend changed direction in the year 1999.

Table 10
Chile: Union members, 1990-2003

Year	Number of unions	Union Members	Union members per union	Employed population	Participation rate*
1990	8,861	606,812	68.5	4,445,781	13.6
1991	9,858	701,355	71.1	4,506,175	15.6
1992	10,756	724,065	67.3	4,704,259	15.4
1993	11,389	684,361	60.1	4,977,837	13.7
1994	12,109	661,966	54.7	5,033,112	13.2
1995	12,715	637,570	50.1	5,092,175	12.5
1996	13,258	655,597	49.4	5,162,841	12.7
1997	13,795	617,761	44.8	5,274,222	11.7
1998	14,276	611,535	42.8	5,370,171	11.4
1999	14,652	579,996	39.6	5,258,395	11.0
2000	14,724	595,495	40.4	5,311,458	11.2
2001	15,192	599,610	39.5	5,321,908	11.3
2002	16,310	618,930	37.9	5,381,724	11.5
2003	16,914	665,480	39.3	5,538,076	12.0

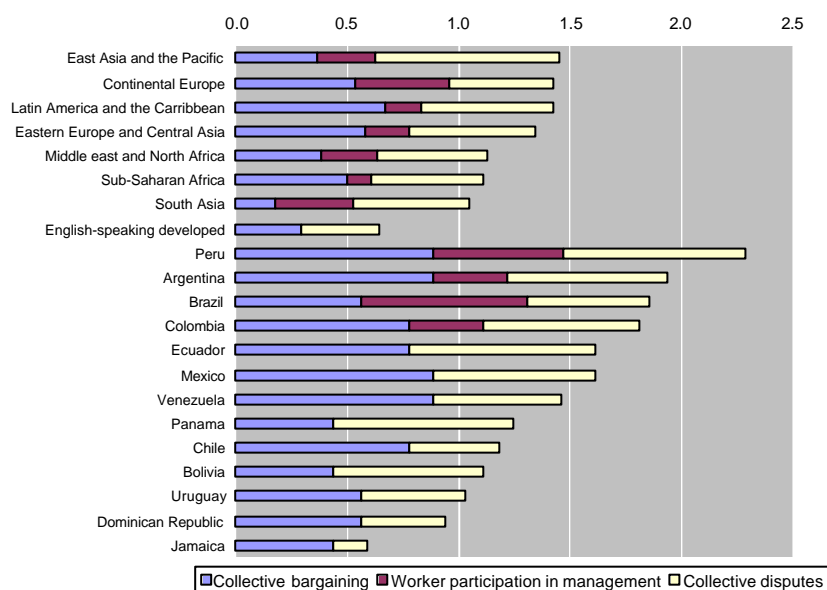
* Ratio of the union members to the Employed population

Source: Employed population, Central Bank of Chile; Union Members and number of unions, Ministry of Labor of Chile.

The period of expansion of unionization coincided with a period of expansion in the rate of unemployment. While the period of reduction in the number of workers that belonged to labor unions coincided with one of rapid growth both of employment and salaries. On the other hand, the reduction in the representation of labor unions during the 90's in Chile coincided with a change in the relationship between the growth of productivity and wages in the same time period. Between 1990-94 average productivity increased 4,9% and the evolution of wages in the industrial sector (the most unionized private sector) increased 5%. In the second half of the decade 1995-2000 average productivity increased 4,4% and industrial wages 3,3% which redistributes income against workers.

Although the unionization rate decreased significantly, the protection of collective bargaining in Chile is high in relative terms. Chile, as can be seen in figure 4, has an index of 0.78 on this issue, while the average of the world is 0,44 and of developed countries is 0,39. The majority of Latin American Countries show a better index than Chile. In other words, in Chile –in relative terms- there are nor very many labor unions, but the ones that exist are well respected during the collective bargaining process.

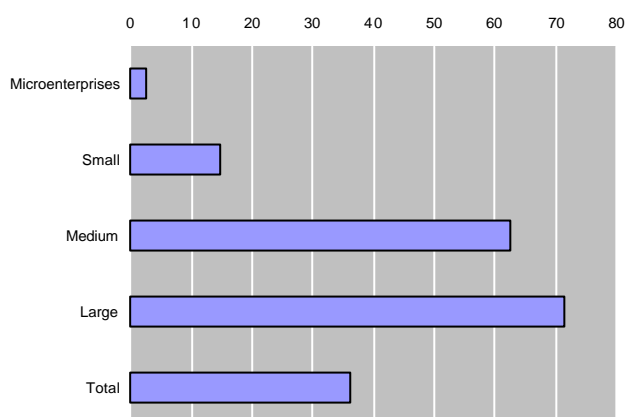
Figure 4
Protection of Collective Bargaining
(Index, 0-3)



Source: Djankov and others (2003).

The existence of unions is very much correlated with the sizes of firms. The following information comes from a survey done by the Ministry of Labor in Chile and covers firms of the formal sector with more than 5 employees and thus differs from the base considered in the tables shown above (that consider all the labor force). It can be seen that the presence of unions is over 50% in medium and large enterprises, but around 10% in the smaller ones (figure 5). Also that almost 100% of the enterprises with labor unions had collective bargaining, while less than 5% of the ones that did not have a union went through the process (figure 2). In table 11 it can be appreciated that although labor unions are the most relevant actor in the collective bargaining process, the instrument of this process have been changing from contracts to conventions that imply a lower commitment for the firm.

Figure 5
Chile: Presence of unions in formal sector, by firm size
(Percentage)



Source: ENCLA, 2002.

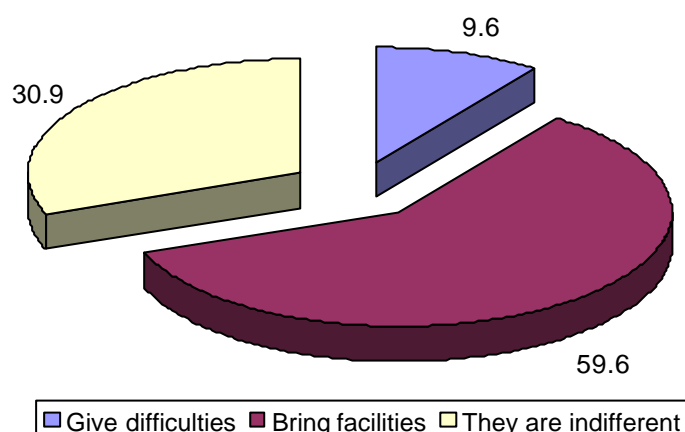
Table 11
Chile: Instruments of collective bargaining
(Percentage of total conventions and contracts)

	1998	1999	2002
Convention bargained by group	21.8	21.6	19.6
Convention bargained by union	24.8	27.8	45.2
Contract bargained by group	6.1	4.8	5.5
Contract bargained by union	47.3	45.7	29.7

Source: ENCLA, 2002

In Chile the majority of employers of the formal sector feel that labor unions are good for the firm (60%) or are indifferent about them. Only one of every 10 thinks that labor unions are a source of difficulties for the firm (figure 6). Also the majority of the employees feel that within the firm prevails a climate of collaboration, but this percentage is higher in firms that do not have labor unions. (table 12).

Figure 6
Chile: Attitude of employers toward unions



Source: ENCLA, 2002

Table 12
Chile: Opinion of the labor climate according to the existence of collective bargaining the last five years

	Yes	No	Total
Always there is an atmosphere of tranquillity and collaboration	30.7	53.7	84.4
Although sometimes there are tensions, in general it is calm	63.7	43.4	107.1
There are as much days of tension as of tranquillity	4.4	2.7	7.1
There are more days of tension than of tranquillity	1.2	0.1	1.3
There is almost permanent tension	0.1	0.2	0.3

Source: ENCLA, 2002

Chile is a country where freedom of association and collective bargaining is legally protected. Labor unions seem to be a crucial actor for collective bargaining to take place, and employees do not seem to have a bad opinion about their level of collaboration within the firm. But during the 90's the representation of labor unions decreased drastically and with it the quality of the collective bargaining agreements. This experience reaffirms the notion that compliance with labor standards is not only a legal issue not even one of enforcement, but in this case of promotion. If collective bargaining is going to cover a

larger percentage of the labor force, more labor unions should be organized, but Chile seems to be moving in the opposite direction.

3.2.- Child labor

As can be seen in Table 13, in Chile 4.16 % of children work while in Latin America the average is 15%. There are many countries in which this is a very relevant issue, with 20 to 30% of their children working.

Table 13
Latin America (19 countries): Estimated figures for child labor

Country	Total population between 10 and 14 years of age	Economically active population between 10 and 14 years of age	Percentage
Argentina	3,197,582	214,238	6.70
Bolivia	386,222	54,549	14.12
Brazil	17,588,115	3,599,747	20.47
Chile (**)	763,732	31,782	4.16
Colombia (*)	2,327,823	367,796	15.80
Costa Rica (*)	203,893	26,009	12.76
Ecuador	1,391,433	420,663	30.23
El Salvador	661,176	85,516	12.93
Guatemala	1,325,725	316,061	23.84
Haiti	847,706	158,182	18.66
Honduras	778,714	88,264	11.33
Mexico	10,934,134	1,233,353	11.28
Nicaragua	575,137	42,310	7.36
Panama	278,631	12,603	4.52
Paraguay	602,417	49,097	8.15
Peru (*)	4,928,899	801,033	16.25
Dominican Rep.	871,144	42,302	4.86
Uruguay	253,846	5,780	2.28
Venezuela	3,205,592	80,781	2.52
TOTAL	51,121,921	7,630,066	14.93

(*) Total child population and economically active child population calculated on the basis of the 12-14 age group.

(**) Total child population and economically active child population calculated on the basis of the 6-14 age group.

(***) Total child population and economically active child population calculated on the basis of the 12-14 age group. Casen, 1996.

Source: ECLAC, 2001.

In tables 14, 15 and 16, that come from a different study and have different definitions, can be appreciated that the majority of the children who work are between 12 and 14 years old and 66% of them are occasional workers. The correlation between levels of poverty and

child labor is not very strong. Although the proportion of extremely poor children that work is higher than the one of poor children and this in turn is higher than non poor, but the differences are less than 5 percentage points between extremely poor and non poor. The correlation with unemployed parents seems to be stronger, particularly in the case of children that work regularly.

The cost in terms of education for those children that work regularly is extremely high, their unattendance rate is 15 times larger than the one of children that do not work and four times larger than the one of children who work occasionally.

Table 14
Chile: Child labor, by poverty line
(Percentage)

	Indigent	Poor	Not Poor
Work regularly	2.1	1.4	1.3
Work occasionally	5.7	4.1	2.0
Do not work	92.1	94.5	96.6
Did not answer	0.1		0.1
Total	100.0	100.0	100.0

Source: MIDEPLAN, 1999

Table 15
Chile: School attendance by children between 6 and 14 years of age, by working frequency.
1996

Working frequency	Percentage of not-attendance
Work regularly	31.5
Work occasionally	8.1
Do not work	2.4
Total	3.0

Source: MIDEPLAN, 1999

Table 16
Chile: Unemployment rate and years of schooling of children's between 12 and 14 years of age heads households, by working frequency
(Percentage and number of years)

Working frequency	Heads household	
	Unemployment rate	Average number of years of schooling
Work regularly	5.5	6.6
Work occasionally	2.2	7
Do not work	2.8	8.9

Source: MIDEPLAN, 1999

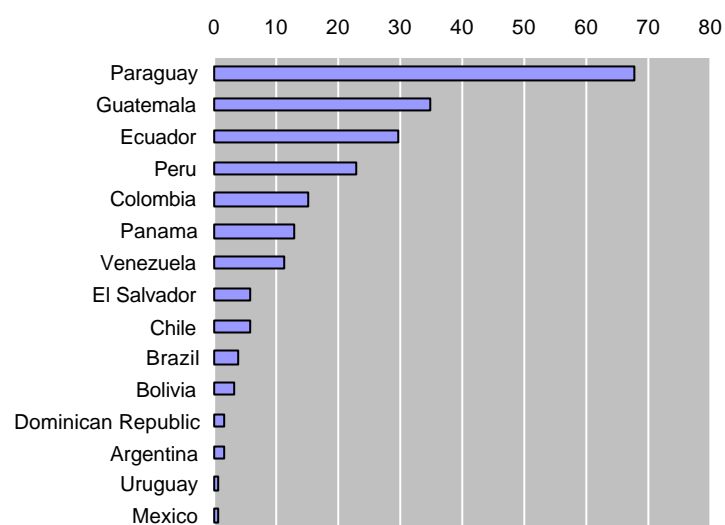
Although child labor does not seem to be a significant problem in Chile, it has an important cost for the child. Besides improving enforcement activities, the other variable that might reduce child labor is the existence of unemployment insurance given the fact that the majority of children who work regularly have unemployed parents.

3.3.- Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health

As was seen at the beginning of this chapter the issues related to working conditions constitute an important proportion of the claims for not fulfilling labor standards in Chile, at the same time they are the largest proportion of the infractions given by the Labor Department. But, neither of these two figures are very significant in size, relative to the proportion of the labor force that has contracts.

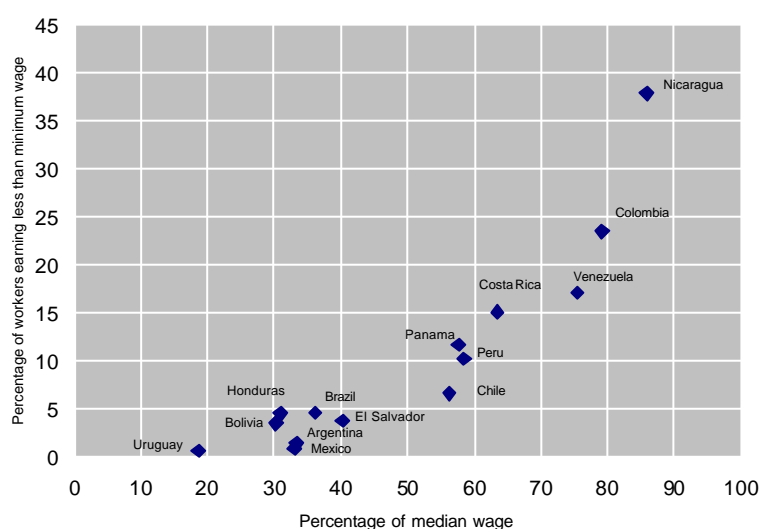
The minimum wage legislation is generally respected in Chile. Figure 7 shows that 6% of the employed workers receive less than 75% of the existing minimum wage, which is about the median in Latin America. In this Region we can find a very clear relationship between the percentage that the minimum wage represents of the median wage and the percentage of workers that earn less than the legal minimum. As expected the higher the minimum wage –in relation to the median- the higher the percentage of workers that earn less than the minimum. Chile behaves in a similar way than the rest of the countries, its relative minimum wage is higher than in any country that has a lower percentage of workers earning less than the minimum (figure 8).

Figure 7
Workers with wages less than 75 percent of the minimum wage, late 1990s
(Percentage)



Source: IDB, 2004.

Figure 8
Minimum wage level and enforcement



Source: IDB, 2004

In Chile, as in the rest of Latin America, the great majority of the workers that earn less than the minimum wage work in enterprises of less than 5 employees. Also its incidence is higher among rural workers and those that only have primary education (table 17). Which again calls attention to the issue of productivity and the capability of the firm to comply with labor legislation.

Table 17
Minimum wage noncompliance rates by education, location and firm size
(Percentage)

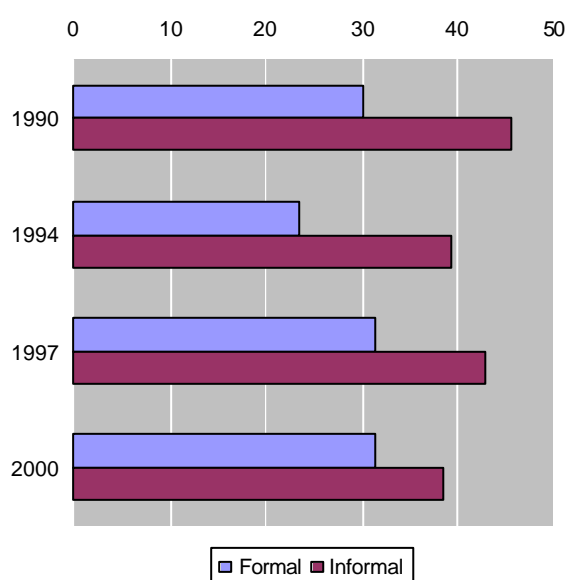
Country	Year	Education			Location		Firm size (number of workers)		
		Primary	Secondary	Tertiary	Rural	Urban	Less than five	More than five	Total
Argentina	2001	8.90	2.64	0.54		3.07	8.51	7.67	3.07
Bolivia	1999	5.01	0.43	0.00	0.36	1.21	4.53	0.06	1.10
Brazil /1	1999	16.16	2.21	0.08	20.38	3.84	21.69	0.37	5.83
Chile	1998	26.72	7.36	0.77	22.96	5.41	17.54	4.38	7.25
Colombia	1999	59.37	23.62	40.60	54.37	17.38			26.90
Costa Rica	2000	29.02	9.72	2.48	23.25	9.21	42.45	7.98	15.66
El Salvador	1999	7.98	2.00	0.23	8.34	2.00	7.87	2.72	3.58
Honduras	1999	10.31	1.42	0.69	11.07	3.19	16.01	2.70	5.88
Mexico	2001	1.48	0.35	0.16		0.52	2.18	0.19	0.52
Nicaragua	2001	59.83	22.88	6.23	56.82	27.58	61.49	26.95	35.58
Panama	2000	32.79	17.60	2.08	19.22	13.19	53.06	6.95	14.78
Peru	2000	66.21	27.26	9.20	52.31	16.38	46.11	14.69	23.46
Uruguay	2000	1.23	0.34	0.13		0.46	2.18	0.15	0.46
Venezuela	1999	35.83	14.31	6.09			41.37	12.20	17.91
Median		21.44	5	0.73	21.65	3.84	17.54	2.72	6.57

1/ Firm size refers to employees without a contract c, not to the number of workers.

Rates are calculated based on the number of employees between 25 and 40 years old working more than 30 hours a week.
Source: IBD, 2004.

Compliance with the legislation on hours of work is less strict. 31.5% of workers from formal sector and 38.6% of workers from informal sector work more than what labor legislation stipulates (Figure 9). It can also be appreciated that this percentage has not changed significantly in the last few years, although the number of working hours per day have been decreasing mildly (table 18).

Figure 9
Chile: workers with 49 or more weekly working hours, by economic sector
(Percentage)



Source: CASEN 1990, 1994, 1997, 2000

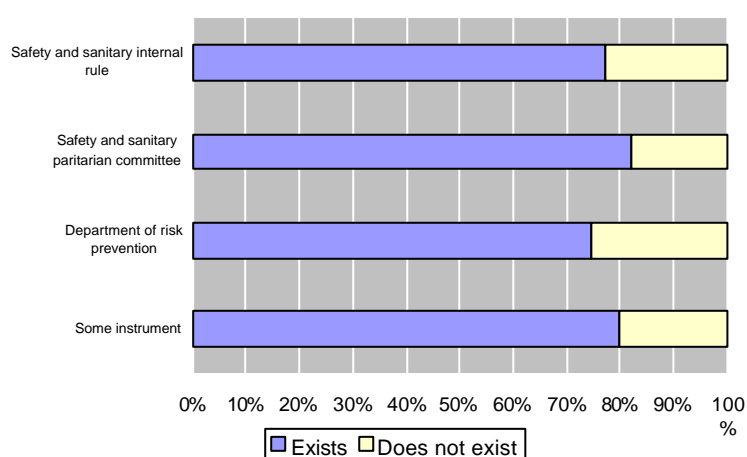
Table 18
Chile: Estimation of average working and rest hours

	1998	1999	2002
Weekly workdays	5.5	5.5	5.5
Weekly rest days	1.5	1.5	1.4
Daily working hours	8.7	8.8	8.5
Lunch minutes	67.6	71.2	43.4
Other pauses minutes	4.9	5.5	25.9

Source: ENCLA, 2002

In order to analyze compliance with the norms on occupational health and safety we will use the ENCLA survey that, as mentioned, only includes formal enterprises and thus its results are biased in favor of compliance. In figure 10 can be seen that about 80% of formal firms in Chile have security and sanitary rules and a department of risk prevention, as well as, the participatory committee on health issues that the legislation mandates. In figure 11 can be appreciated that noncompliance of risk prevention differs very significantly among sectors. Those sectors that produce goods –with the exception of the public utility sector– have a lower percentage of noncompliance than the average (20%). The opposite is true in the service sector where noncompliance climbs up to 37% in the financial sector. This explains why the majority of the workers feel that the basic sanitary conditions are good or satisfactory (73%) as they also are the physical conditions of the working place (95,5%) (Table 19).

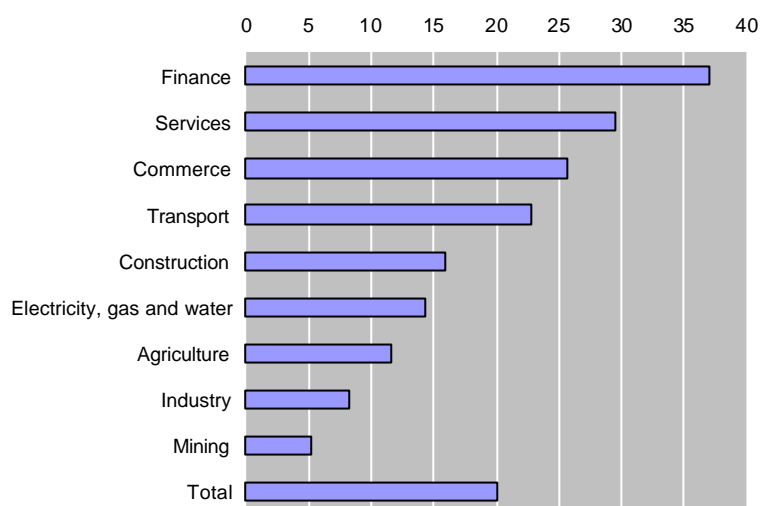
Figure 10
Chile: Instruments of risk prevention



Note: The department of risk prevention considers only firms with 100 or more employees. The safety and sanitary committee, the companies with 25 or more workers; and se safety and sanitary internal rule considers all the companies.

Source: ENCLA, 2002

Figure 11
Chile: Noncompliance of instruments of risk prevention



Source: ENCLA, 2002

Table 19
Chile: Conditions of working establishment

	Basic sanitary conditions	Physical place
Good	52.8	78.5
Satisfactory	19.6	17.0
Bad	4.4	3.7
Do not exist	23.2	0.7

Sanitary conditions includes: sanitary services, restaurant and showers

Physical place includes: space, illumination, ventilation

Source: ENCLA, 2002

As could be appreciated conditions of work are generally acceptable in the Chilean formal sector. The only variable that showed significant rates of non-compliance was the standard on hours of work. Again it was found that smaller firms –even of the formal sector- had lower rates of compliance than larger firms and that when the information to make comparisons with other Latin American countries was available Chile appeared relatively well off.

4.- Conclusion

Almost all the free trade agreements that Chile has signed consider -although in different ways- the need to comply with the labor standards present in the domestic legislation. And, in most cases, the parties in the agreement have committed themselves to recognize and legally protect the labor principles and rights defined by the ILO, particularly the ones

agreed in the 1998 “Copenhagen Conference”. In general all parties that have concurred to these FTA’s with Chile, already have a labor legislation that gives due account of the mentioned labor principles and rights.

The FTA’s signed by Chile have not included any commitment to converge on labor standards, they all explicitly state that legal implementation if such commitments is a domestic matter.

Chile’s experience with free trade agreements and labor standards leads to believe that this issue will become an integral part of future free trade agreements, particularly in the American continent (FTAA). There are many arguments to support this proposition:

- ? The growing consideration of labor standards in the signed agreements. The USA has never signed a FTA where LS have not been considered. Chilean experience is that this issue acquires an increasing importance in free trade negotiations. All ongoing negotiations that include North American countries are contemplating this issue.
- ? The fact that all American countries, in very different forums, have committed themselves to comply with ILO’s LS. Even more they have accepted that compliance with them should be part of the globalisation process, although trade sanctions have never been accepted, nor are they part of the present scheme of incorporating LS in trade negotiations.
- ? The inclusion in the American TPA of LS as an integral part of the FTA forces the US government. It does not seem probable that the US Congress will change this condition especially when compliance with LS in the rest of Latin America (besides Mexico and Chile) is considered. As was seen Chile is relatively better off than the rest of the countries of the region in terms of enforcement and compliance with LS.
- ? The employment issues, including stability and conditions at work, is and has been the most important problem for Latin Americans. It seems politically difficult to avoid commitments in this area. In the case of Chile the agreement reached by the American and Chilean labor unions in terms of incorporating labor standards in the FTA was an important reason to accept this inclusion.
- ? Issues related to labor standards have already been present in trade disputes between Latin American countries and the USA, as part of the claims of dumping that American firms have made. It seems better for Latin America to negotiate this issue rather than be confronted to unilateral action.

Chile’s, short lived, experience on this matter tells us that the inclusion of the labor standards issue as part of the agreement will not imply any legal changes nor will trade be affected with sanctions because of non-compliance with LS. Even more, the longer experience of NAFTA and the Canada-Chile FTA leads to believe that the labor issue will not be an important source of disputes. This does mean that the LS issue is not important in Latin America, on the contrary compliance with them is still a major issue. Three main reasons for this lack of compliance were identified:

- ? There is a large proportion of the labor force (in Chile it is 54% and the simple average for Latin America is 72%) that does not have access to labor standards because they do not have a formal labor contract. Almost all unprotected or

vulnerable workers are unemployed, work in small enterprises or on their own (non-professionals). These, at the same time are the lower productivity sectors and thus face economic restrictions to formalise their enterprises and to comply with existing legislation. Unfortunately vulnerable workers seem to be increasing in size and in relative terms in Chile and Latin America.

- ? Within the formal sector and particularly in large firms, there is a relatively low level of non-compliance with LS, although it varies among standards and sectors. Smaller firms, within the formal sector, have relatively less labor unions and collective bargaining and show less compliance with LS. Social security, that until now has not been part of the negotiations, is the most important claim for non-compliance in Chile. The fact that there are important sectoral differences might become an issue if non-compliance is important in a sector that is relevant in terms of trade or investment for the USA (i.e. minimum wage in the agricultural sector or conditions of work in the financial sector).
- ? There is large room for progress on institutional capacity for the labor market. Increasing efficiency of enforcement institutions is related to enforcement practices, institutional capabilities, as well as, with the level of cooperation of the employer and enterprise. Progress in this area is a tremendous challenge, which could make an important contribution for equitable growth. Several studies have shown that the weakness in these institutions prolongs the effect of external shocks in Latin America, decreasing the average rate of growth and employment generation. Institutional change should be assumed in integral manner, that is considering public institutions and employees, the judicial sector and the creation or strengthening of institutions for social dialogue. A partial advance, this is in only one of these areas will not produce the expected results.
- ? Compliance or access to some rights or standards is very much related to the existence of labor unions within the firm. In Chile and Latin America, the presence of unions are decreasing and with it the coverage and quality of collective bargaining. In those firms with labor unions the entrepreneurial opinion is favourable to both unions and collective bargaining. Promotion of labor standards and of social organisation is a necessary component of any program to ensure compliance with LS.

The labor commitments acquired in the FTA's have not changed at all the legal obligations that Chile already had. The difference, after the FTA's, lays on the eventual impact of the cooperation agreements related to labor issues that have accompanied the signature of these agreements. Also the fact that FTA's have included the labor standards issue seem to have had a positive effect on entrepreneurial awareness and disposition to comply with this standards. This, in turn, has facilitated the enforcement activities of the Labor Department and thus it's operating efficiency and outcome.

Even though the cooperation agreements on labor issues considered in the FTA's signed by Chile are still not operating, they are geared towards institutional building. Improving the capabilities of the enforcement institution (in the cases of Canada and the USA) and towards promotion of social dialogue in the case of the European Union. The strengthening of the judicial sector on labor issues is also mentioned in the Chile-USA FTA. Until now

this agreements have not considered cooperation on programs to improve the quality of low productivity jobs or the personal capacities of vulnerable workers which seems to be the larger problem. Even more, the FTA's signed by Chile have not implied immediate drastic differences in the level of direct and indirect protection of sectors –such as agriculture– where many of these workers are employed.

Given that the LS issue will inevitably be part of trade negotiations in the Americas it is useful to learn from Chilean experience to define how and what should be negotiated. If there is a common interest in increasing the number and proportion of workers protected by LS in Latin America, two aspects not covered by the Chilean cooperation agreements should be considered.

- ? The inclusion of co-operation on the issue of “low productivity jobs”. This possibility has an important precedent in NAFTA, but it has not been considered in any negotiations with the rest of Latin America.
- ? Increasing the export possibilities of those sectors that employ vulnerable workers is a very direct way to create conditions for the improvement of labor standards compliance. Given that one of the arguments in developed countries not to open this sectors is the existence of unfair trade or social dumping a commitment to open these sectors coupled with a commitment to improve labor conditions in the less developed countries could benefit both parties.

Besides this new areas Chile's experience of receiving cooperation on institutional building in the labor market area should be replicated.

Annexes

Annex 1: complaints examined by the ILO committee on Freedom of Association

Table 1A
Complaints examined by the ILO Committee on
Freedom of Association, by country
(Percentage)

Countries	1990-1995	1996-2000	Index 1990-1995=100
Argentina	13.2	12.6	78.9
Brabados	0.0	0.8	n.s.
Bolivia	1.4	0.8	50.0
Brazil	2.1	5.9	233.3
Chile	1.4	5.0	300.0
Colombia	8.3	10.9	108.3
Costa Rica	4.2	9.2	183.3
Ecuador	6.3	3.4	44.4
El Salvador	5.6	3.4	50.0
Guatemala	6.9	10.1	120.0
Honduras	2.8	0.8	25.0
Mexico	0.7	4.2	500.0
Nicaragua	5.6	3.4	50.0
Panama	2.1	4.2	166.7
Paraguay	6.9	3.4	40.0
Peru	16.7	10.9	54.2
Dominican Rep.	3.5	0.0	0.0
Uruguay	2.1	3.4	133.3
Venezuela	10.4	7.6	60.0
TOTAL	100.0	100.0	82.6

Source: ILO, 2002

Annex 2: The Labor Chapter in the Chile-USA FTA

Article 18.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the *International Labor Organization* (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*. Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 18.8 are recognized and protected by its domestic law. 2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 18.8 and shall strive to improve those standards in that light.

Article 18.2: Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 18.8 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory. 18-2

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

Article 18.3: Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial tribunals of general, labor or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, for the enforcement of the Party's labor laws.

2. Each Party shall ensure that its proceedings for the enforcement of its labor laws are fair, equitable, and transparent.

3. Each Party shall provide that the parties to such proceedings may seek remedies to

ensure the enforcement of their rights under domestic labor laws.

4. For greater certainty, decisions by each Party's judicial tribunals of general, labor, or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, or pending decisions, as well as related proceedings, shall not be subject to revision or reopened under the provisions of this Chapter.

5. Each Party shall promote public awareness of its labor laws.

Article 18.4: Labor Affairs Council

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation Mechanism established under Article 18.5, and to pursue the labor objectives of this Agreement. Each meeting of the Council shall include a public session, unless the Parties otherwise agree.

3. Each Party shall designate an office within its labor ministry that shall serve as a point of contact with the other Party, and with the public, for purposes of carrying out the work of the Council.

4. The Council shall establish its work program and procedures and may, in carrying out its work, establish governmental working or expert groups and consult with or seek advice of non-governmental organizations or persons, including independent experts. 18-3

5. All decisions of the Council shall be taken by mutual agreement of the Parties and shall be made public, unless the Council decides otherwise.

6. Each Party may convene a national consultative or advisory committee, as appropriate, comprising members of its public, including representatives of its labor and business organizations and other persons to provide views regarding the implementation of this Chapter.

7. Each Party's point of contact shall provide for the submission, receipt, and consideration of public communications on matters related to this Chapter, and shall make such communications available to the other Party and the public. Each Party shall review such communications, as appropriate, in accordance with its domestic procedures.

Article 18.5: Labor Cooperation Mechanism

Recognizing that cooperation provides enhanced opportunities for the Parties to promote respect for the principles embodied in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*, compliance with *ILO Convention 182*

Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999), and to advance other common commitments, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 18.5.

Article 18.6: Cooperative Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the point of contact that the other Party has designated under Article 18.4(3).
2. The Parties shall consult promptly after delivery of the request. The requesting Party shall provide specific and sufficient information in the request for the other Party to respond.
3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.
4. If the Parties fail to resolve a matter through consultations, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party's point of contact. 18-4
5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
6. If the matter concerns whether a Party is conforming to its obligations under Article 18.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 22.4 (Consultations) or a meeting of the Commission under Article 22.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.
7. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 18.2(1)(a).
8. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 18.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.

Article 18.7: Labor Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 12 individuals who are willing and able to serve as panelists in disputes arising under Article 18.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals. Labor roster members shall be appointed by mutual agreement of the Parties and

may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

2. Labor roster members shall:

- (a) have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, either Party; and
- (d) comply with a code of conduct to be established by the Commission. 18-5

3. Where a Party claims that a dispute arises under Article 18.2(1)(a), Article 22.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 18.8: Definitions

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

statutes or regulations means:

- (a) for the United States, acts of the Congress or regulations promulgated pursuant to acts of the Congress that are enforceable by action of the federal government; and
- (b) for Chile, acts or regulations promulgated pursuant to acts that are enforceable by the agency charged with enforcing Chile's labor laws. 18-6

Annex 18.5

Labor Cooperation Mechanism

Establishment of a Labor Cooperation Mechanism

1. Recognizing that bilateral cooperation on labor matters will provide enhanced opportunities for the Parties to improve labor standards, and to further advance their common commitments, including the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*, the Parties have established a Labor Cooperation Mechanism.

Organization and Principal Functions

2. Each Party shall designate an office within its ministry of labor to serve as a point of contact to support the work of the Labor Cooperation Mechanism.

3. The Parties' labor ministries shall carry out the work of the Labor Cooperation Mechanism by developing and pursuing cooperative activities on labor matters, including by working jointly to:

- (a) establish priorities for cooperative activities;
- (b) develop and periodically revise a work program of specific cooperative activities in accord with such priorities;
- (c) exchange information regarding labor policies and the observance and effective application of labor law and practice in the Parties' territories;
- (d) exchange information on and encourage best labor practices, including best practices adopted by multinational firms, small and medium enterprises, and other private enterprises, as well as by labor organizations;
- (e) advance understanding of, respect for, and effective implementation of the principles reflected in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*;
- (f) promote the collection and publication of comparable data on labor standards, labor market indicators, and enforcement activity; 18-7
- (g) arrange periodic labor cooperation review sessions at the request of either Party, review current cooperative activities, and provide guidance for future cooperative activities between the Parties; and
- (h) develop recommendations to their respective governments for their consideration.

Cooperative Activities

4. The Labor Cooperation Mechanism may undertake cooperative activities on any labor matter it considers appropriate, such as on:

- (a) *fundamental rights and their effective application*: legislation, practice, and implementation related to the core elements of the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, abolition of child labor, including the worst forms of child labor in compliance with the ILO Convention N°182 on the *Worst Forms of Child Labour (1999)*, and elimination of employment discrimination);
- (b) *labor relations*: forms of cooperation among workers, management, and governments, including the resolution of labor disputes;
- (c) *working conditions*: legislation, practice, and implementation related to occupational safety and health; prevention of and compensation for work-related injuries and illness; and employment conditions;
- (d) *issues related to small and medium enterprises*: promotion of fundamental rights at work; improvement of working conditions; forms of cooperation between employers and worker representatives; and social protection services agreed between workers' organizations and employers or their associations;
- (e) *social protections*: human resource development and employment training; work benefits; social programs for workers and their families; migrant workers; worker

adjustment programs; and social protection, including social security, income security, and health care services; 18-8

(f) *technical issues and information exchange*: programs, methodologies, and experiences regarding productivity improvement; labor statistics, including comparable data; current ILO issues and activities; consideration and encouragement of best labor practices; and the effective use of technologies, Including those that are Internet-based; and

(g) implications of economic integration between the Parties for advancing each Party's labor objectives.

Implementation of Cooperative Activities

5. The Parties may carry out cooperative activities under this Annex through any form they deem appropriate, including by:

(a) exchanging government delegations, professionals, and specialists, including through study visits;

(b) sharing information, standards, regulations and procedures and best practices, including through the exchange of pertinent publications and monographs;

(c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(d) developing collaborative projects or demonstrations;

(e) undertaking joint research projects, studies, and reports, including by engaging independent experts with relevant expertise;

(f) drawing on the expertise of academic and other institutions in their territories in developing and implementing cooperative programs and by encouraging relationships between such institutions on technical labor issues; and

(g) engaging in technical exchanges and cooperation.

6. In identifying areas for cooperation and carrying out cooperative activities, the Parties shall consider views of their respective worker and employer representatives, as well as other members of civil society.

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